

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: CITY OF WASHINGTON NPDES Permit #9271001	ADMINISTRATIVE CONSENT ORDER NO. 2008-WW- 04 <i>2009-</i>
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TO: David Plyman
City of Washington
City Hall
P.O Box 516
215 E. Washington St.
Washington, IA 52353

I. SUMMARY

This administrative consent order (Order) is entered into between the City of Washington (Washington) and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations related to the unpermitted construction of a sanitary sewer line by the City of Washington. Pursuant to this Order, Washington shall pay an administrative penalty in the amount of \$5,000. This penalty will be satisfied by the payment of \$5,000 to the Washington County Conservation Board to be used for Supplemental Environmental Projects pursuant to an agreement entered into between the Iowa Department of Natural Resources and the Washington County Conservation Board.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Paul Brandt
IDNR Field Office #6
1023 W. Madison
Washington, IA 52353
Ph: 319-653-2135

Relating to this Order:

Jon C. Tack
Legal Services Bureau
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph. 515-281-8889

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and chapter 567 Iowa Administrative Code (IAC) 10 which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Washington operates a wastewater treatment facility pursuant to NPDES Permit # 9271001. The existing NPDES permit expired on September 13, 2006. Washington made timely application for renewal and the permit remains valid awaiting reissuance by the Department.

2. On January 24, 2007, Washington submitted a construction permit application to the Department for the construction of an 18-inch gravity sewer line proposed to serve a new bio-diesel plant under construction in Washington. The application could not be approved at that time due to concerns related to ongoing noncompliance at the Washington wastewater treatment facility.

3. In May and June of 2007, the Department and Washington engaged in negotiations intended to result in an administrative consent order establishing necessary controls and a construction schedule to complete necessary facility upgrades. The negotiation of this consent order was a necessary precursor to the Department's approval of the proposed new sewer line.

4. On June 19, 2007, the Department sent the proposed administrative consent order to Washington for signing.

5. On June 28, 2007, the Department was informed by Washington that the sewer line had been built without a permit, contrary to law, and had been completed approximately two months earlier.

6. On June 29, 2007, the Department determined that a construction permit could not be issued to Washington since the project was already completed without a permit.

7. On July 5, 2007, Washington returned the signed administrative consent order to the Department.

8. On July 13, 2007, the Department issued a Notice of Violation to Washington for construction of the new sewer line without a permit. Washington was informed that the matter would be referred to the Department's Legal Services Bureau for further enforcement.

9. On July 24, 2007, the Department issued Administrative Consent Order No. 2007-WW-13, which established a compliance schedule to complete necessary facility upgrades at Washington's wastewater treatment facility with stipulated penalties for noncompliance.

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IV. CONCLUSIONS OF LAW

The Department and Washington agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit.
2. Iowa Code section 455B.173(3) authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems, the discharge of pollutants into waters of the state, and the issuance of permits to waste disposal systems. The Commission has done so at 567 IAC 60 through 69.
3. Subrule 64.2(1) prohibits the construction or modification of a waste disposal system without or contrary to the terms of a permit. Washington has violated this provision.

V. ORDER

The Department and Washington hereby agree, and Washington is hereby ordered to pay an administrative penalty in the amount of \$5,000 at the time of execution of this Order. This penalty will be satisfied by the payment of \$5,000 to the Washington County Conservation Board to be used for Supplemental Environmental Projects pursuant to an agreement entered into between the Iowa Department of Natural Resources and the Washington County Conservation Board

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5000.00 per day of violation for the violations involved in this matter.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at chapter 567 IAC 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with penalties.
 - a. Economic Benefit. At the time of violation, Washington had a pending construction permit application. Therefore, the engineering and other costs had already

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been incurred. The primary economic benefit of this violation was realized by the bio-diesel plant, rather than by Washington. However, some economic benefit was realized due to the economic benefits to the City resulting from the bio-diesel plant's operation. In addition to the direct tax revenues arising from the operation of the facility, the increased economic activity would also benefit the City. Due to the secondary nature of these economic benefits, only \$500 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. In this case, an unpermitted sewer line extension was constructed to collect additional wastewater for a treatment plant that was already overloaded and in need of significant upgrade. The construction of this sewer line not only undermines the Department's regulatory program for the protection of water quality but also threatened to cause wastewater effluent violations. Based upon these considerations, a penalty of \$2,000 is assessed for this factor.

c. Culpability. Washington was aware of the Department's reservation about the construction of a new sewer line prior to initiating the illegal construction of the sewer line. At the time of construction it had not yet been determined whether the sewer line construction would be approved. As evidenced by the submission of a construction permit application, Washington was aware that a permit was required prior to construction but chose to disregard this requirement. During the time of construction of the sewer line, the Department and Washington were in negotiations in regard to an administrative consent order intended to provide for the construction of necessary wastewater facility upgrades as a precondition to the approval of the construction permit for the new sewer line. During these negotiations, Washington did not divulge that the sewer line was being, or had been, constructed. This information was not disclosed until Washington was in receipt of the proposed administrative consent order in its final form for signature. Based upon these considerations, a penalty of \$2,500 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1) and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Washington. By signature to this Order, all rights to appeal this Order are waived.

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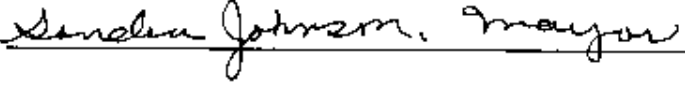
VIII. NONCOMPLIANCE

Compliance with Part V. of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of additional administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 9 day of
Feb., ~~2008~~
2009



CITY OF WASHINGTON

Dated this 30th day of
January, ~~2008~~ 2009

NPDES #65252001; Field Office #6; Jon Tack; EPA; Wayne Farrand; I.B.2.b